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[BP Home Page](#)
[The MSC](#)
[CMM](#)
[POST Enterprise](#)
[The Project Office](#)
[Life Cycle Processes](#)
[Search BP](#)
[HHSDC Links](#)
[Resources Library](#)
[QAWG **NEW!**](#)
[SID Policy **NEW!**](#)
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The Project Office has been established to provide optimal ways to structure critical resources to support the needs of the project and the customers we serve...

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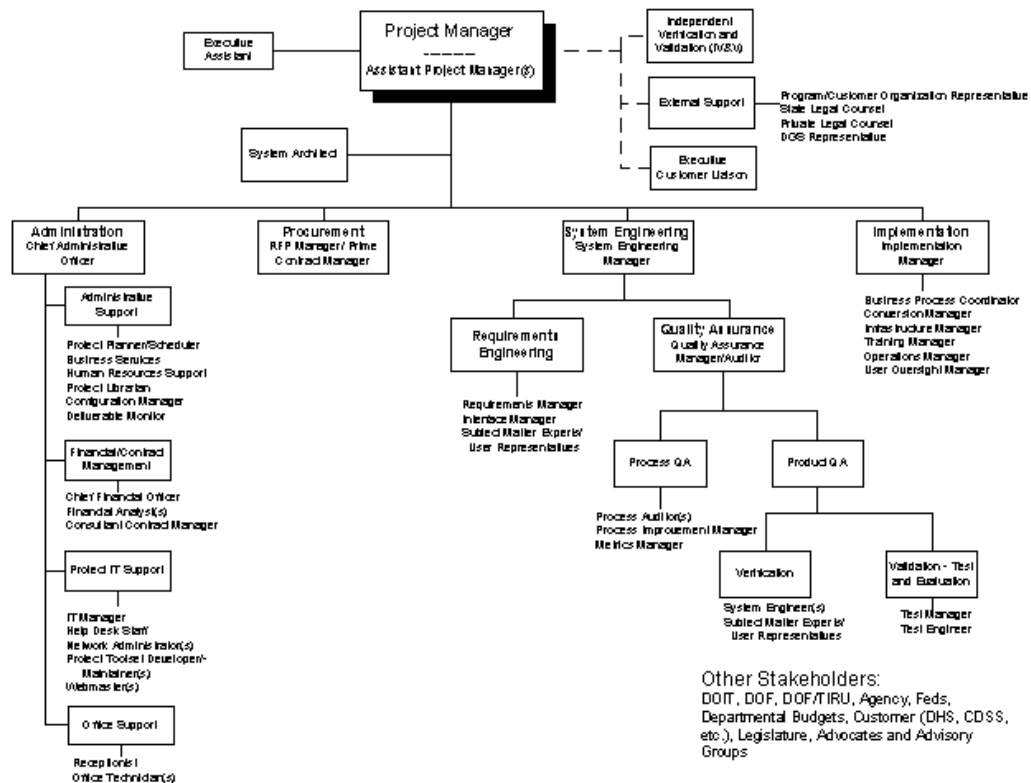
The Project Office

The following chart shows the functional positions required for System Acquisition. The project manager decides the level of staffing required for each function depending on the size and complexity of the project; one person may serve multiple roles or multiple people may be required for a single role. A summary of the [Roles & Responsibilities](#) of the Project Office functions depicted below helps to emphasize the complexity and diversity of various skills for managing large projects.

NOTE: This chart is intended to describe a Project Office, not a Project Management Office (PMO). Refer to the [Glossary](#) for clarification of these terms.

The Project Office must also consider the [computing tools and infrastructure](#) and the [project processes](#) that are need for the smooth operations of a project office. These items should be assembled or obtained during the Initiation and Planning Phases.

This chart is also available in a [Visio 5 version](#), and in [PDF](#).




[HHSDC Home](#)
[BP Home Page](#)
[The MSC](#)
[CMM](#)
[POST Enterprise](#)
[The Project Office](#)
[Life Cycle Processes](#)
[Search BP](#)
[HHSDC Links](#)
[Resources Library](#)
[QAWG **NEW!**](#)
[SID Policy **NEW!**](#)
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Project Office Roles and Responsibilities

[PO Main](#)

The following describes the Project Office organization, its roles, and responsibilities recommended to support a system through its life cycle. The organizational structure presumes the Project Office hires a prime contractor for system development and/or maintenance and operation. Two organizations are defined, one for Initiation, Planning, Design, Development and Implementation, and the other for Maintenance and Operation

Remember in some cases, it may be appropriate to combine roles into a single position or to have multiple people supporting a single role. [Position Descriptions](#) (PDs) would need to be tailored to address each project's size and needs.

The Roles & Responsibilities outlined below are also available in [PDF](#) and [MS Word](#) formats. In addition, the CMIPS project has adapted the R&R matrix for funding justification tool ([R&R Funding Matrix Sample](#) (MS Word)).

Refer also the the [CDSS and HHSDC Sponsor Workgroup area](#) (CDSS link) for more information on expectations and roles for the Project Sponsor.

Project Office (For Initiation, Planning, Design, Development, & Implementation)

- [Project Management](#) <click on title to expand and collapse>
- [System Architect](#) <click on title to expand and collapse>
- [Administration](#) <click on title to expand and collapse>
- [Procurement](#) <click on title to expand and collapse>
- [System Engineering](#) <click on title to expand and collapse>
- [Quality Assurance](#) <click on title to expand and collapse>
- [Implementation](#) <click on title to expand and collapse>
- [External Support](#) <click on title to expand and collapse>
- [Independent Verification & Validation \(IV&V\)](#) <click on title to expand and collapse>
- [Executive Customer Support](#) <click on title to expand and collapse>
- [Other Stakeholder Support](#) <click on title to expand and collapse>

Project Office (Additional Roles For Maintenance & Operations Only)

- [Applications Support](#) <click on title to expand and collapse>
- [Customer Services](#) <click on title to expand and collapse>
- [Operations](#) <click on title to expand and collapse>


[HHSDC Home](#)
[BP Home Page](#)
[The MSC](#)
[CMM](#)
[POST Enterprise](#)
[The Project Office](#)
[Life Cycle Processes](#)
[Search BP](#)
[HHSDC Links](#)
[Resources Library](#)
[QAWG **NEW!**](#)
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Project Office Infrastructure and Tools

[PO Main](#)

The typical Project Office infrastructure includes the following equipment and tools, along with the [project processes](#) needed to support them (such as check-in/check-out, change request and upgrade and project office help desk procedures). This page is intended as a general checklist; exact equipment manufacturers, specifications, and quantities will be made at the time of purchase.

Hardware:

- Desktop computers with:
 - Monitor
 - CPU
 - network card(s)
 - CD (or DVD) player
 - Floppy drive
 - Speakers
 - Modem (optional)
 - CD writer (optional)
 - Tape drive (optional)
 - Zip drive (optional)
- Disk Storage
- Scanner(s)
- Plotter
- Network hardware
- Servers:
 - Email
 - Exchange
 - Microsoft (MS) SQL (optional)
 - Web
 - Remote Access
- Printers
- Copiers (black and white, and color)
- Phones
- Fax machine and/or on-line fax
- PDA computers, such as Palm, Handspring (optional)
- Laptop computer for check out (optional)
- Conference Room equipment
 - Laptop computer
 - Projector
 - Conference phone
 - Printing white boards

Applications for desktop computers:

Function	HHSDC Standard Tool
Operating System	MS NT or later
Word processing	MS Word
Spreadsheet	MS Excel
Presentation and Briefings	MS PowerPoint
Database	MS Access and/or SQL
Internet Browser	MS Explorer
Email and Calendar	MS Outlook
Web Authoring	Adobe PageMill or MS FrontPage
Graphics/Flowcharting	Visio
Reading/Creating PDF files	Adobe Acrobat and Distiller

Virus Protection

Norton Antivirus

Project Management Tools:

Function	HHSDC Standard Tool
Budget and Expenditure Mgmt	TBD or SETS
Requirements Management	MS Access or RequisitePro
Schedule Management	MS Project
Issue/Action Item Tracking	MTS II or Remedy or ClearQuest
Risk Management	POST or Risk Radar
Document Management	iManage
Contact Management	MS Outlook
Change Control	POST or ClearQuest
Contract and Deliverable Management	POST or MTS II
RFP Management	TBD
Policy Issues Management (if not part of Issue/Action Tracking above)	TBD
Asset and Inventory Tracking for State-owned Items in the Counties	TBD or Remedy

Additional Applications for Admin staff for:

- Travel Authorization and Claims
- Project Accounting System for Expenditures, Budget Tracking, Invoices
- County Claims and Expenditures Tracking
- Timesheets
- Personnel Data
- Facilities/Phone Tracking

Additional Applications for IT staff for:

- Account Administration
- System and Performance Monitoring
- Backups
- System Installations
- IT Help Desk/Problem Tracking
- Computer Based Training Products
- Asset and Inventory Tracking
 - Including maintenance contracts and licenses

Additional Applications for Development staff for:

- Configuration Management and Version Control of custom software and tools
- Data Conversion Tools, as needed
- Development Tools and Environments
 - For custom software/tools and/or the delivered system, if not provided by the prime contractor
- Test Tools and Environments
 - For custom software/tools and/or the delivered system, if not provided by the prime contractor
- Customer Service Help Desk/Problem Tracking
- Project Website
 - May be public, private/secured site shared with counties, or an intranet


[HHSDC Home](#)
[BP Home Page](#)
[The MSC](#)
[CMM](#)
[POST Enterprise](#)
[The Project Office](#)
[Life Cycle Processes](#)
[Search BP](#)
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[Resources Library](#)
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Project Office Processes

[PO Main](#)

The following is a list of project processes and supporting materials generally needed to ensure smooth operations of the project office.

Administrative Processes

- Staffing Plan and Transition Process (for new and departing staff)
 - Entry and Exit Checklists
 - New Employee Handbook/Orientation Manual
 - Conflict of Interest/Confidentiality Certification
 - Network Access Certification
- Timesheet Process
 - Vacation and Overtime Requests
- Training Plan (for staff development)
- Training Request Process
- Conference Room Scheduling Process
- Personnel Tracking Process
 - Emergency Contact Form
- Travel Authorization and Claim Process
- Invoice Tracking Process
- Budget and Funding Process
- County Claims and Expenditure Tracking Process
- Documentation Standards
- Library Access Process
- Records Retention Schedule
- Facility Tracking Process (phones, special furniture, cubicles, etc.)

IT Processes:

- User Account Maintenance Process
- Equipment Checkout Procedures (laptops, projectors, etc.)
- Help Desk Procedures
- Configuration Management Plan (for project IT)
 - Change Control Process (for IT tools, COTS, and equipment)
 - IT Asset and License Inventory Tracking Process
- Configuration Management Plan (for State-owned items in counties)
 - Change Control Process (for configuration, COTS, and equipment)
 - County IT Asset and License Inventory Tracking Process
- Backup and Recovery Plans and Procedures
- Business Continuity Plan
- Disaster Recovery Plan and Procedures
- Service Level Agreement

Management Plans and Processes:

- Charter
- Governance Plan and Stakeholder Roles and Responsibilities
- Interagency Agreements and/or Memoranda of Understanding
- Project Management Plan
 - Communication Plan

- Configuration Management Plan
 - Change Control Process (for requirements/scope)
 - Risk Management Plan
 - Risk Management Process
 - Escalation Process
- Contractor Management Plan
 - Vendor Handbook
 - Deliverable Management Process
 - Deliverable Transmittal Sheet
 - Deliverable Review and Approval Sheet
 - Contract Amendment and Work Authorization Process
 - Escalation Process
- Requirements Management Process
- Schedule Management Process (if managing multiple schedules, such as counties and contractor)
- Issue/Action Item Tracking Process
- Document Tracking and Management Process
- Document Review and Approval Process
- County Oversight Process, if appropriate



CONFLICT OF INTEREST AND CONFIDENTIALITY CERTIFICATION

I certify that I have no personal or financial interest and no present or past employment or activity that is incompatible with my participation in any activity related to the planning or procurement processes for the Health and Human Services Data Center (HHSDC) project identified below (hereinafter "Project"). I further certify that neither my spouse nor my dependent child(ren) has a personal or financial interest and no present employment that would be incompatible with my participation in Project activities. For the duration of my involvement in this Project, I agree not to accept any gift, benefit, gratuity or consideration, or begin a personal or financial interest in any party who is bidding or associated with a bid on the Project. I am able to give full, fair and impartial consideration to this project.

I further certify that I will hold in the strictest confidence and will not copy, disclose or give access to any person who has not signed a copy of this confidentiality agreement any information or data concerning the planning, design, development, processes, procedures, correspondence, working papers or any other information, in any form, that is made available to, or is accessible by me as part of my participation in the Project. I fully understand that any disclosure of Project information may be a basis for civil or criminal penalties and/or disciplinary action, including termination or dismissal.

I understand that if my service ends before the end of the Project, I must continue to always keep confidential all Project information, which was made available to me as part of my duties and participation with the Project. I agree to follow any instruction provided by the HHSDC relating to the confidentiality of Project information.

Name: _____

Position: _____

Employer: _____ (State, County or Contractor/Consultant)

Division/Unit: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Signature: _____ Date: _____

Project Identification: **Child Welfare Services/Case Management System (CWS/CMS)**
Request for Proposal #HWDC 7012

Instructions

- Return Original Signed Certification to Sylvia Wall
- Keep Copy for Self (and Employer) if desired

Conflict of Interest Memo for HWDC Employees and Contractors

Conflict of Interest Memo

Introduction

Many HWDC employees and/or contract consultants (“Contractors”) may find themselves in a position where they participate in decision making processes, for example through a RFP process or contract negotiation, which may involve the financial interests of that employee or contractor. As an illustration of a financial interest, the employee/contractor, his or her spouse or his or her dependent child could own stock in a corporation that is bidding on an RFP and the employee/contractor is on the RFP evaluation committee or procurement team. Or, the employee/contractor’s spouse works for a company that is negotiating a contract with HWDC and the employee/contractor is involved in the contract negotiations. Or, the agency has a contractual relationship with a company and the employee/contractor, who owns stock in the company, is assigned to participate in an agency decision that will modify, extend or expand the scope of the contract with that company.

California law prohibits State of California employees and contractors from making or participating in making or in any way influencing a government decision when that employee/contractor has a financial interest in the outcome of that decision. This is known as the Conflict of Interest Laws.

What Are the Conflict of Interest Laws?

Government Code Section 87100 (also known as the Political Reform Act) states: “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

Government Code Section 1090 provides that government agency employee/contractors may not make or participate in the making of a contract with that agency when they have a financial interest in that contract. Both laws apply to state officers and employees, and to consultants contracted to the state (“contractors”).

The intent of the law is to have employee/contractors disclose their assets and income as they may materially affect the official actions of the employee/contractor, and to disqualify those employee/contractors from making decisions that involve a conflict of interest. The purpose of the conflict of interest provisions is to require State employee/contractors to perform their duties in an impartial manner, free from bias caused by the employee/contractor’s own financial interest.

Although an employee/contractor may be able to show that no harm occurred because of a conflict of interest discovered after the fact, the courts will look at what could have occurred when determining whether the law has been broken. The statutes are designed to eliminate temptation, avoid the appearance of any impropriety and assure the government of the employee/contractor’s undivided and uncompromised allegiance, thus eliminating or at least limiting the possibility of any personal influence, directly or indirectly, which might bear on the employee/contractor’s official decisions.

Conflict of interest laws provide for criminal, civil and administrative sanctions. They are designed to punish the individual employee/contractor who violates state conflict of interest

Conflict of Interest Memo for HWDC Employees and Contractors

requirements. This makes each one of you the focus of a conflict of interest analysis. It also makes each individual's situation unique to that person. For example, two people working on the same project may have a very different conflict of interest analysis, which may reach a very different conclusion regarding their continued participation or disqualification from the project. The legal office is available to assist you in making your conflict of interest analysis.

Conflict of interest laws also have an impact on government agencies, such as HWDC, and our contractors and vendors. The law will void contracts, and courts may enjoin enforcement of their terms, if the contract was made involving individuals who violated the state's Conflict of Interest laws. This can lead to serious monetary consequences for HWDC and the vendor.

What Constitutes "Making" a Contract?

The California Supreme Court has found that making a contract encompasses not only the signing of a contract, but the negotiating, analyzing, and even research that led up to the formal making of the contract. Thus, there can be a violation of the law regardless whether the employee/contractor actually signed the contract in question.

What is "Making a Decision" or "Participating in the Making of a Decision"?

Making a decision includes voting on a matter, appointing a person to a position, obligating the agency or department to a course of action on an issue or entering into a contract for the agency or department. Participating in the making of a decision involves negotiating a new contract or renewing an existing one, or advising or making recommendations to decision makers by way of either conducting research or investigation, or preparing a report, analyses or opinion for the decision maker, if these functions are performed without significant intervening substantive review.

An employee/contractor may not attempt to use his or her official position to influence a governmental decision when that employee/contractor has a reasonably foreseeable and material financial interest in the decision. This requirement specifically includes attempting to affect any decision either within or outside the employee/contractor's own department or any department subject to the budgetary control of his or her department.

However, those actions which are solely ministerial, secretarial, manual, or clerical are not considered making or participating in the making of a decision and, therefore, are excluded from conflict of interest disqualification. Further, an employee/contractor may appear at a hearing or otherwise before a public agency to represent his or her own personal interests if the employee/contractor does so in his or her private capacity and if the matter in question relates only to the employee/contractor's private interests and not to his or her official duties.

What is an Economic or Financial Interest?

The two most likely areas of potential conflict for HWDC employee/contractors involve the employee/contractors own income sources or financial investments, and the income or investments of the employee/contractor's spouse or dependent children. For a spouse, typically the issue concerns the spouse's employment with a company that is doing business or attempting

Conflict of Interest Memo for HWDC Employees and Contractors

to do business with HWDC or the project. Dependent children are those who are claimed by the parent(s) on their federal and state income tax forms.

The law addresses the five following kinds of financial interests:

- Sources of income: Includes any source of income which is received or promised to the employee/contractor, spouse or dependent child (other than loans from a commercial lender in the ordinary course of business) and which totals \$250 or more during the 12 month period immediately preceding the HWDC employee/contractor being involved in a decision.
- Investments in business entities: Includes any direct or indirect investment of \$1,000 or more. Direct investments are owned by the employee/contractor. Indirect investments include investments owned by a spouse or dependent child or an investment held by a third party on behalf of the employee/contractor.
- Interests in real property: Includes any direct or indirect financial interest held by the employee/contractor, spouse, or dependent child, in realty, such as an equity, option or leasehold interest, of \$1,000 or more. It also includes ownership, mortgages and deeds of trust, options to buy and joint tenancy interests.
- Positions with business organization: Includes a position held by the HWDC employee/contractor, spouse or dependent child, as an officer, director, manager, partner, or employee/contractor of a business. As a contractor, this includes the position you hold in the company you are employed by, where the company has a contract with the state.
- Donor of gifts: Includes gifts from companies or organizations to the HWDC employee/contractor, spouse or dependent child, aggregating \$290 or more in the 12 month period immediately preceding the decision. Unused gifts returned to the donor within 30 days are excluded, as are gifts from close relatives and inheritances.

How is the Act Enforced and What Are the Penalties for Violation?

Administrative, civil and criminal penalties against the individual exist for each violation of the conflict of interest statutes. Administrative penalties may include a \$5,000 fine per violation, as well as cease and desist orders and orders to file reports, etc. Civil sanctions include fines and injunctive relief which can be sought by a civil prosecutor, such as the Fair Political Practices Commission (FPPC), the state Attorney General's Office or a county District Attorney, or by any person residing in the employee/contractor's jurisdiction. A civil court has the power to void the decision or contract entered into which is in violation of these provisions.

Any individual who violates the Conflict of Interest laws may also be criminally prosecuted. Violations of law may be found to be felonies or misdemeanors. Penalties may include imprisonment in state prison or county jail, and/or a fine, or both.

Other related sanctions may involve the employee/contractor forfeiting his or her right to hold "office" with the State of California. The case law deals primarily with state officers. There is no case specifically referencing the inability of a state employee/contractor to hold their state position after conviction for a violation of this section. However, case law has held employee/contractors to the same restrictions as state officers. Therefore, it is likely an employee/contractor also would be barred from continued state employment after a conviction.

Conflict of Interest Memo for HWDC Employees and Contractors

Disclosure of Interests

In addition to the disqualification requirements of conflict of interest laws, described above, employees and contractors who are involved in decision making which could affect their economic interests are often required to disclose their economic (i.e., financial) interests by filing an annual Statement of Economic Interest (“SEI”) with the employing state agency.

The Statement of Economic Interest (“SEI”) is a public record. Some employee/contractors are required to file the disclosures because of their positions (i.e., management) and others are required to file because of their duties (i.e., appointment to an RFP evaluation team). Generally, these statements disclose the types of financial interests in real property, investments, and sources of income and gifts which could potentially affect the employee/contractor’s work duties at HWDC.

One purpose of the SEI is to get the individual filer thinking about their own personal financial interests, and whether their job duties are in conflict with their interests. A second purpose of the SEI is to provide a public agency reference information which it can review prior to assigning an employee/contractor to a particular contract, project or decision-making process.

You will be required to file a SEI with HWDC if your position or duties are identified in the HWDC Conflict of Interest Code regulation as one that requires an SEI. (Title 2, California Code of Regulations, Section 36000). Typically, most decision making positions are identified as requiring the person performing the duties to file a SEI. However, not all decision making positions require the person to file an SEI. But it is important to keep in mind that whether or not you are required to file a SEI, if you are involved in making decisions or contracts for HWDC, the decision making and contract Conflict of Interest laws still apply to you.

If you occupy a position where you make, participate in the making, or influence an agency decision or contract, it is likely you will need to complete a SEI disclosure form. If you have not been asked to do so, please contact your project supervisor and the HWDC Personnel Office for assistance in determining whether or not you need to complete a SEI. If your position or duties require you to file a SEI, Personnel has instructions and the appropriate form (FPPC Form 700) for you to complete. If you have any questions concerning the SEI, or would like a copy of HWDC’s Conflict of Interest Code, you may direct your inquiries to Personnel or Legal.

Conflict of Interest Memo for HWDC Employees and Contractors

CONCLUSION

An HWDC employee/contractor must carefully examine his or her personal financial interests, before participating in any decision making process or contract related to the business of HWDC, to determine whether or not his or her participation may be in violation of one of the two conflict of interest statutes discussed in this memo.

For Section 87100 of the Political Reform Act, each employee/contractor must consider:

- Whether they are making, participating in or influencing a government decision or contract?
- Whether they, their spouse or dependent child have a personal financial interest, such as income, an investment, real property, or a source for a gift, which is the subject of the decision or contract?
- If it is reasonable foreseeable that the decision or contract will affect their financial interest?
- If the affect of the government decision or contract on their financial interest will be material?
- Are their interests affected differently than those of the general public or a significant segment of the public?

If the answer to each question is “yes”, the employee/contractor probably has a conflict of interest, and could be required to disqualify him/her self from all participation in that decision. The HWDC Legal Office should be consulted before any decisions are made.

For Government Code Section 1090, the employee/contractor must consider:

- Has or will the employee/contractor participate in the making of a contract in which the employee/contractor has a direct or indirect financial interest? As above, self disqualification is required.
- Also, for any violation of this statute, the contract is void by law. Any private gain received by the contracting party (i.e., vendor) must be returned to the State, even if the State keeps what was delivered to it by the contractor under the terms of the contract..

Certification

Attached is a Conflict of Interest and Confidentiality Certification for you to read and complete. Please follow the instructions and return the original signed copy to the HWDC Legal Office. This certification shall be used for all HWDC procurements, contract negotiations or other applicable projects and activities.

If you have any questions or concerns regarding the issues raised in this memorandum or the Certification, please feel free to contact the HWDC Legal Office. That office will assist your determination whether you are subject to disqualification. Also, the FPPC provides telephone advice and written opinions to any individual who has questions concerning the application of the Political Reform Act to their personal situation. You may choose to consult the FPPC. You may also consult with private legal counsel, at your own expense.

Conflict of Interest Memo for HWDC Employees and Contractors

Conflict of Interest Analysis

When does my participation in a decision create a conflict of interest?

If, after reviewing the Conflict of Interest Memo for HWDC Employee/contractors, you believe you may have a conflict of interest, you should review the following analysis in order to confirm whether a conflict in fact exists. There are four components to determining whether or not you have a conflict of interest. They are:

- Whether you make or participate in a governmental decision.
- Whether you have a personal financial interest.
- Whether it is foreseeable that the decision will affect your interest.
- Whether the effect of the decision on your financial interest will be material.

If you do not meet the criteria of any one of these components, you do not have a conflict of interest. However, whether or not you have a conflict of interest may change with any changes to your job duties and/or financial interest. You should regularly review your duties with the types and amounts of your personal financial interests, including those of your spouse and dependent child.

When am I making or participating in a decision?

You make a decision when you:

- Vote on a matter
- Appoint a person
- Obligate or commit HWDC to any course of action
- Enter into any contractual agreement on behalf of HWDC
- Determine not to act in any of these ways

In addition, you participate in a decision when you are assigned to do a task, or assigned to a work group, committee, team or task force or any other group, for the purpose of:

- Making decisions.
- Negotiating on behalf of HWDC.
- Providing analysis, input or recommendations for HWDC to decision makers.

You also participate in a decision when, as an individual, you:

- Advise or make recommendations to a decision maker, whether or not the decision maker ultimately follows your advice.
- When you represent HWDC in negotiations concerning a governmental decision.

However, if your actions are solely ministerial, secretarial, clerical, or manual, you are not participating in a governmental decision. You also do not participate in making a decision if there is “significant intervening substantive review” of your activity. If you still have questions regarding whether you are participating in making a decision, please review Attachment B.

Conflict of Interest Memo for HWDC Employees and Contractors

When do I have a financial interest?

See: What is an Economic or Financial Interest?, above, page 2.

For example:

- You have a financial interest when your investment in a business (or your spouse's or dependent child's) has a minimum value of \$1,000 or more.
- You have a financial interest when you or dependent child received from a business entity more than \$250 in income, or your spouses has received more than \$500 in income (one-half being your share of community property), or you, your spouse or your dependent child received more than \$290 in gifts, over the past 12 months.

When is it foreseeable that my decision or participation in a decision will affect my financial interest?

In order to create a conflict of interest, the effect of the decision on your financial interest must be reasonably foreseeable. An effect on your financial interest is reasonably foreseeable when there is a substantial likelihood that the affect will ultimately occur as a result of the decision.

For example:

- An example of reasonable foreseeability is when a vendor company in which you own a financial interest typically bids on specific types of government projects, such as welfare projects. There is a substantial likelihood that the vendor will bid on the current project as well. Therefore, your financial interest likely will be affected.
- The FPPC has stated that "[e]ven if HWDC's contract requirements do not specify that the computers purchased contain Intel components or Microsoft software, the computers purchased may well contain these products. As you noted, most computers or computer related equipment contain some Intel product, and many computers include a Microsoft software package. Therefore, there is a substantial likelihood that a decision to purchase thousands of computers would have a financial effect on Intel or Microsoft, and the effect would be considered reasonably foreseeable." (FPPC Advice Letter I-98-006).
- Another example of reasonably foreseeable can arise in the context of a RFP procurement. You (and your team members) must determine whether any vendor, and any sub-vendor (i.e., a vendor to the vendor) who paid you income in the last 12 months, or whose stock you own, is likely to bid on the RFP. This conflict of interest analysis should be undertaken by each of you throughout the RFP – procurement process. Certain stages of the RFP process may serve as triggers for conflicts analysis.

To illustrate, in the initial phases of the RFP development, you may contact vendors for information, or vendors may contact you to learn about the intended business proposal. From this, your RFP Team should develop a good idea which vendors (and their potential sub-vendors) may bid on the RFP. This is a good time for all team members share vendor information to do a conflicts of interest analysis. A second time to make a conflicts analysis is when the vendors (who may mention their sub-vendors) submit a letter of intent to bid on a project RFP. Other times to do a conflicts of interest analysis are when the various proposals to the RFP are submitted by the vendors to HWDC, as well as when the bid is ultimately awarded to the vendor who will be contracting to do the work on the project. At these stages, you know or should know the identify of each vendor (and their sub-vendors), so you can

Conflict of Interest Memo for HWDC Employees and Contractors

make your determination whether or not you have a personal conflict of interest. If you do, then you must be disqualified from performing further duties for the RFP bid or project development.

When is the effect of the decision on my financial interest material?

There are two types of financial interest that need to be analyzed to make a conflict of interest determination of a “materiality” can be made.

The first financial interest to consider is the employee/contractor’s personal financial interest in the business which is substantially likely to benefit from a government decision that the employee/contractor is involved with. These interests were describe above. (See: What is an Economic or Financial Interest?, above, page 2).

The second financial interest is whether the government agency’s decision or contract which the employee/contractor makes or participates in will have a material affect on their personal financial interest. This “materiality” element of the analysis is considered here.

The Political Reform Act requires a calculation of the estimated dollar value of the government decision to the vendor’s or contractor’s (and sub-vendor’s) financial interest. The interest to the business entity must meet or exceed the minimum threshold dollar amounts before the interest becomes “material”. Agency decisions or contracts which have a financial impact on a business that are less that the threshold amounts will not establish a foreseeable “material” personal financial interest for participating employees/contractors. In such instances, there is no conflict of interest for anyone who makes, participates in or influences decisions or contracts regarding that vendor. Attachment A describes the dollar thresholds and categories of financial interests for various capitalized companies used to determine materiality.

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. An example is a contract that calls for a vendor (and sub-vendors) to develop, implement, operate and maintain a major automated system. Some payments for contract deliverables may be identified to occur in a certain fiscal year. However, that may not always be the case. If you have any questions or concerns regarding materiality of a financial interest, please feel free to contract the HWDC Legal Office for assistance.

Conflict of Interest Memo for HWDC Employees and Contractors

Attachment A

When is my financial interest a material conflict of interest?

Your financial interest will be **material** when the decision or contract you will be making or participating in will have a financial effect on a company (i.e., the decision will provide a benefit or loss, per fiscal year for each category) that exceeds the following dollar amounts shown below:

(a) If it is a Fortune 1000 company:

- \$1,000,000 on gross revenues
- \$ 250,000 on expenses
- \$1,000,000 on assets/liabilities

(b) If it is not a Fortune 1000 company, but is listed on the New York or American Stock Exchange:

- \$250,000 on gross revenues
- \$100,000 on expenses
- \$250,000 on assets/liabilities

(c) If it is listed on NASDAQ National Market Companies:

- \$150,000 on gross revenues
- \$ 50,000 on expenses
- \$150,000 on assets/liabilities

(d) If it is listed on Pacific Stock Exchange, or Eligible Securities List maintained by the state Department of Corporations (corporations and partnerships):

- \$30,000 on gross revenues
- \$ 7,500 on expenses
- \$30,000 on assets/liabilities

(e) For all other small privately held interests:

- \$10,000 on gross revenues
- \$ 2,500 on expenses
- \$10,000 on assets/liabilities

Source: 2 CCR 18702.2

Conflict of Interest Memo for HWDC Employees and Contractors

Attachment B

Are You Actually Making a Decision? (87100)

Decision making includes voting on a matter, appointing a person to a position, obligating one's agency to a course of action on an issue, or entering into a contract for the agency. Further, a decision not to act in any of these ways is also "making a decision".¹

¹ Title 2, California Code of Regulations (CCR), section 18700:

"The provisions herein define terms as used in Chapter 7 of the Political Reform Act of 1974, as amended, Government Code Sections 87100-87312.

(a) "Public official at any level of state or local government" means a member, officer, employee, or consultant of a state or local government agency. The term "public official" also includes individuals who perform the same or substantially the same duties as an individual holding an office or position listed in Government Code Section 87200, including "other public officials who manage public investments" as that term is defined in [law]...

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decisionmaking authority...

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
5. Grant agency approval to a contract which requires agency approval and in which the agency is a party to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

(b) A public official "makes a governmental decision," except as provided in subdivision (d) of this section, when the official, acting within the authority of his or her office or position:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;
- (5) Determines not to act, within the meaning of subdivisions (b)(1), (b)(2), (b)(3), or (b)(4) above, unless such determination is made because of his or her financial interest. When the determination

Conflict of Interest Memo for HWDC Employees and Contractors

Are You Participating in Decision Making? (87100)

The regulations and statutes include many activities beyond the most obvious actions such as voting or contracting, since the language “participate in making...a governmental decision” is included in the general prohibition. The FPPC has interpreted “participation” to include (1) negotiations with others involving a government decision, and (2) advice or recommendations to the decision maker by way of conducting research, making investigations, or preparing or presenting reports, analyses or opinions, if these functions are performed without significant intervening substantive review.²

An example of “significant intervening substantive review” may be that although you are conducting research or preparing an analysis, you report the results to a third party “intermediary”. To qualify as a significant intervening substantive review, the intermediary must completely re-analyze all of the information in your report (your facts, analysis and conclusions). The intermediary must exercise their independent judgment, and reach their own conclusions. The intermediary then submits to the decision maker their own report and analysis, not yours.

not to act occurs because of the official’s financial interest, the official’s determination must be accompanied by disclosure of the financial interest, made part of the agency’s official record or made in writing to the official’s supervisor as provided [in law]...

(c) A public official “participates in making a governmental decision” except as provided in subdivision (d) of this regulation, when, acting within the authority of his or her position, the official:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in subdivision (a)(2)(A) above:
- (2) Advises or make recommendations to the decision maker, either directly or without significant intervening substantive review, by:
 - (A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in subdivision (a)(2)(A) above, or
 - (B) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which it to influence a governmental decision referenced in subdivision (a)(2)(A) above.

(d) Making or participating in the making of a governmental decision shall not include:

- (1) Actions of public officials which are solely ministerial, secretarial, manual or clerical;
- (2) Appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official’s personal interests as defined [in law]...; or
- (3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are “consultants,” as defined above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.”

² See 2 CCR 18700(c)(2)(A) & (B), above.

Conflict of Interest Memo for HWDC Employees and Contractors

Only then can it be concluded that you are not making, participating in, or influencing the decision being made by the decision makers. As a practical rule of thumb, besides simply compiling facts, if you are conducting research or analysis, and use your independent judgment to reach conclusions and make recommendations to a supervisor or committee, you are participating in making a decision.

Are You Attempting to Use Your Official Position to Influence the Decision Making? (87100)

The regulations and statutes prohibit an employee from “in any way attempting to use his or her official position to influence a governmental decision” when the employee has a financial interest. This includes any contacts with other HWDC personnel where the employee may influence the other employee’s decision on a matter in which the employee may have a financial interest.³

Are You Participating in the Making of a Contract? (1090)

There are no specific state regulations regarding whether an HWDC employee is participating in the making of a contract under Government Code Section 1090. We must rely solely on case law determined on an individual basis by California courts. The State Attorney General has issued various opinions on this issue which are also case specific.

One case that has been cited by many courts as well as the Attorney General, states that the test is whether the employee participated in the making of the contract in his or her official capacity. The court defined the making of the contract to include preliminary discussion, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitation for bids.⁴ Even though this case involved a specific fact pattern of a city council member who, after participating fully in the planning stages of a decision, thought to avoid a conflict by resigning from the council before the actual vote on the matter occurred, it was the conclusion of the court that the making of a contract must include persons who play an advisory position to the decision makers. This is because such persons can influence the development of a contract during preliminary discussions, negotiations, etc., even though they have no actual power to execute the final contract.⁵

Another court, in determining that a city council member had been involved in the making of a contract, stated:

³ 2 CCR 18700.1(a): “With regard to a governmental decision which is within or before an official’s agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence, include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.”

⁴ Millbrae Assn. for Residential Survival v. City of Millbrae (1968) 262 Cal.App.2d 222.

⁵ Schaefer v. Berinstein (1956) 140 Cal.App.2d 278; City Council v. McKinley (1978) 80 Cal.App.3d 204.

Conflict of Interest Memo for HWDC Employees and Contractors

“...the negotiations, discussions,, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense... If the date of final execution were the only time at which a conflict might occur, a city councilman could do all the work negotiating and effecting a final contract which would be available only to himself and then present the matter to the council, resigning his office immediately before the contract was executed. He would reap the benefits of his work without being on the council when the final act was completed. This is not the spirit nor the intent of the law which precludes an officer from involving himself in the making of a contract.”⁶

Although this fact situation is not likely to be found at HWDC, it can be analogized to a situation where an employee who owns stock in a vendor provides advice or research to a committee or team that is deciding whether or not that vendor may provide a product or service. Even though this is a committee decision, the question is whether the employee who owns the vendor’s stock “participated in making the decision”? Again, there is no black letter law in this area, however, reasonableness and common sense must be used when making these determinations.

⁶ City Council v. McKinley (1978) 80 Cal.App.3d 204, 212.